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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/090,968	03/05/2002	Richard B. Streeter	VIA-17	7502

7590 10/05/2004
Pandiscio & Pandiscio
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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT PAPER NUMBER

3738

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,968

Applicant(s)

COHN ET AL.

Examiner

Brian E Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardon et al. (5383892) in view of Kleshinski (5755778). Cardon et al. show a bendable elongated body with a spring segment **2** connecting proximal and distal ends. Cardon also discloses that at least two spring segments can be used, col. 2, lines 3,4,6. Cardon additionally discloses the spring segment is made of an elastic material that stretches when expanded to the second configuration, col. 2, lines 49-53. However, Cardon does not disclose that there is a plurality of barbs on fixed length sections of the proximal and distal ends or that a shape memory metal is used for the spring section. Kleshinski teaches (Fig. 1) fixed length sections (**14,16**) at the proximal and distal ends and contain a plurality of barbs **20**. Kleshinski also teaches stent framework can be made of shape memory material to enable temperature transition to transform the shape to a second configuration, col. 6, lines 7-17. It would have been obvious to one of ordinary skill in the art to incorporate the barbed proximal and distal end sections with the stent of Cardon such that it enables the device to be anchored in the patient's vessel. Additionally, with respect to claim 3, it would have been obvious to one of

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ordinary skill in the art to incorporate shape memory material as taught by Kleshinski for the spring segment of Cardon such that it eliminates the use of a balloon to expand the stent.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cardon et al. '892 in view of Kleshinski '778 as applied to claim 4 above, and further in view of Solem et al. '432. Cardon as modified by Kleshinski is explained supra. However, Cardon in view of Kleshinski fail to disclose barbs on intermediate section. Solem et al. teach (Fig. 3) that the intermediate section of the stent includes barbs **10**. It would have been obvious to one of ordinary skill in the art to incorporate barbs also on the intermediate section as taught by Solem with the stent of Cardon as modified by Kleshinski such that it further limits the stent from movement or dislodges from the target site it was implanted.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Solem et al. '432 in view of Kleshinski '778 . Solem et al. disclose a method of reducing mitral regurgitation by placing a prosthesis into the coronary sinus to reduce the gap between leaflets, col. 4, lines 19-21,38,39. Solem also discloses the device is made of a shape memory alloy (col. 3, lines 38-41) which inherently enables the device to transform from a first configuration to a second configuration. It can be seen (Fig. 3) the device is a spring-like structure with barbs that extend from end to end. However, Solem does not disclose that there are fixed length sections at the proximal and distal ends. Kleshinski discloses (Fig. 1) fixed length collars including barbs at the proximal and distal ends of a tubular prosthesis. Kleshinski also teaches the collars hold on the tubular graft material

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that provides a fluid tight seal in the patient's vessel, col. 3, lines 14-17,40-45. It would have been obvious to one of ordinary skill in the art to incorporate the collars and graft as taught by Kleshinski with the stent of Solem such that it prevents blood leakage in the patient.

Response to Arguments

Applicant's arguments with respect to claims 1,12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 9am to 6:30pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738
Primary Examiner
Brian E. Pellegrino

Brian E. Pellegrino